

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01593

Assessment Roll Number: 3049913
Municipal Address: 11830 Jasper Avenue NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Steven Kashuba, Presiding Officer
Jack Jones, Board Member
Robert Kallir, Board Member

Procedural Matters

[1] The parties to the hearing did not indicate any objection to the composition of the Board. Further, no bias or conflict of interest with respect to this matter was expressed by the members of the Board.

[2] The parties giving evidence at the hearing were sworn in.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property, known as Earl's Restaurant, is located in the Oliver Subdivision and is classified as a restaurant. The subject building was constructed in 1985 on a land area of 24,014 square feet. The assessed lease area is 8,964 square feet. Using the income approach to value, the current assessment is \$3,297,000.

Issue(s)

[5] Is the capitalization rate (cap rate) of 6.5% utilized to derive the 2013 assessment of the subject property correct?

[6] Is the 2013 assessment of the subject property at \$3,297,000 fair and equitable?

Legislation

[7] The *Municipal Government Act*, RSA 2000, c M-26, reads:

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

s 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

[8] The *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004 (MRAT) reads:

s 2 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

s 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Position of the Complainant

[9] In support of their request for a reduction in the assessment amount, the Complainant submitted Exhibit C-1, 36 pages. The Complainant indicated that the only issue with respect to the assessed value of the subject property was the cap rate. The Complainant was in agreement with the other components of the assessment valuation proforma (Exhibit C-1, page 12).

[10] It is the submission of the Complainant that the cap rate of 6.5%, as applied by the City in their proforma (Exhibit C-1, page 11), is too high. The twelve sales comparables presented in Exhibit C-1, pages 15 - 16, support this position.

[11] The Complainant presented the cap rates for twelve sales comparables before any adjustments were made to the income stream (Exhibit C-1, page 15, column 9). As well, the Complainant presented cap rates for the same twelve sales comparables after adjustments were made to the income stream (Exhibit C-1, page 15, column 11).

[12] By applying a vacancy rate of 5% and a 2% structural rate to the net income, the adjusted median cap rate was calculated to be 7.46%, and the average cap rate was 7.45% (Exhibit C-1, page 15).

[13] The Complainant further examined each of the twelve sales comparables (Exhibit C-1, page 16) and demonstrated that the assessment-to-sales ratios (ASRs) ranged from 72% to 135% (0.72 to 1.35), well outside the acceptable deviation range of plus or minus 5% from the ideal of 1.00 (0.95 to 1.05).

[14] Additional adjustments to the sales comparables were made by using The Network's net income (Exhibit C-1, pages 23 - 36) and the 2013 assessed value to derive a cap rate (Exhibit C-1, page 16). To the net income of each sales property was applied a typical vacancy (5%) and structural allowance (2%). The Complainant utilized the adjusted net income along with the 2013 assessment for the sales comparables to derive an adjusted cap rate for each property. The resultant median cap rate was calculated to be 8.17%, and the average cap rate was 8.22%. These cap rates support the conclusion that a cap rate of 6.5% as applied by the City is too high.

[15] In response to a question of the Board, the Complainant submitted that in arriving at a requested reduction in the assessment amount, the most weight should be placed upon the cap rates as derived from comparable sales. The median cap rate derived from these sales was 7.46% (Exhibit C-1, page 15). This cap rate was decreased from 7.46% to 7.0% because of the superior location of the subject near the downtown core.

[16] By applying a cap rate of 7.0% to the net operating income of \$214,293, results in a requested assessment amount of \$3,061,000 (Exhibit C-1, page 12).

[17] The Complainant presented a summary of each of the sales comparables as derived from The Network sales data (Exhibit C-1, pages 23 - 36).

[18] The Complainant concluded their presentation by stating that the subject property should be assessed utilizing a cap rate of 7.0%, which results in the requested assessment of \$3,061,000 (Exhibit C-1, page 12).

Position of the Respondent

[19] The Respondent noted, through questioning of the Complainant, that the only issue before the Board with respect to the assessed value of the subject property was the cap rate.

[20] The Respondent stated that they required clarification from the Complainant regarding the Retail Sales Cap Rates presented in Exhibit C-1, page 15.

[21] The Respondent requested clarification as to the methodology utilized by the Complainant to derive the adjusted net income and adjusted cap rates. The Complainant was unable to support or explain how these figures were determined other than to say that a vacancy rate of 5% and a structural allowance of 2% had been used. Upon further questioning the Complainant stated that they were unsure as to how these rates had been utilized to arrive at the adjusted net income set out in Exhibit C-1, page 15.

[22] The Respondent also questioned the relevance of the sales as being comparable to the subject property due to their property type. Further to this, only Sale #9 and Sale #12 were located in the proximity of the subject property (Exhibit C-1, pages 23 - 36). This, in the submission of the Respondent, brings into question the element of comparability.

[23] The Respondent questioned the details of the individual sales comparables presented by the Complainant with respect to lease rates, lease terms, an expropriation of one property, lease motivation, a multi-parcel sale, building types, and a vacant lot component. The Complainant responded that the only data available was as presented on The Network data sheets (Exhibit C-1, pages 23 - 36). No additional information was available.

[24] The Respondent stated that they required clarification from the Complainant regarding the cap rate analysis presented in Exhibit C-1, page 16.

[25] Specifically, the Respondent requested that the Complainant clarify the derivation of the time-adjusted sales prices (TASPs) and the associated assessment to sales ratio (ASRs). The Complainant responded that the TASPs were incorrect for all of the sales comparables other than Sale #1 and that the ASRs presented were also incorrect other than for Sale #1. Upon reflection, the Complainant agreed with the Respondent that the information presented in the ASR column was meaningless (Exhibit C-1, page 16, column 5).

[26] The Respondent outlined the governing legislation which places the onus or burden of proof on the Complainant, who must prove that the assessment is incorrect. In light of the numerous errors evident in the Complainant's evidence and in the absence of satisfactory explanations, the Respondent took the position that the Complainant had not met their required onus and requests the Board dismiss the complaint and confirm the 2013 assessment of the subject property at \$3,297,000.

Decision

[27] It is the decision of the Board to confirm the Respondent's application of a cap rate of 6.5% in determining the 2013 assessment of the subject property as being fair and correct.

[28] It is the decision of the Board to confirm the assessment of the subject property for 2013 at \$3,297,000.

Reasons for the Decision

[29] The data presented by the Complainant in support of a requested reduction to the 2013 assessment of the subject property contained numerous errors and unsupported or unexplained data that could not be relied upon by the Board for a meaningful analysis.

[30] The Complainant was not able to satisfactorily explain the vacancy and structural adjustments made to the net operating incomes of the sales comparables to determine the adjusted cap rates (Exhibit C-1, page 15). In addition, the TASP's and ASRs illustrated in Exhibit C-1, page 16, were incorrect. As a result, this diminished the value of these tables. The relevance of the sales comparables presented by the Complainant was problematic when taking into consideration the varied property types and the lack of proximity to the subject property.

[31] At an assessment appeal, as determined in *Calgary (City) v Alberta (Municipal Government Board) 2010 ABQB 719*, the ultimate burden of proof or onus rests with the Appellant to convince the Board that their argument, facts, and evidence are more credible than those of the Respondent.

[32] The Board determined that the Complainant had not met the onus or burden of proof as required by the legislation to determine that the assessment is incorrect.


[33] After review and consideration of the evidence and argument presented by both parties, the Board has concluded that the 2013 assessment of \$3,297,000 is fair and correct.

Dissenting Opinion

[34] There was no dissenting opinion.

Heard commencing October 22, 2013.

Dated this 5th day of November, 2013, at the City of Edmonton, Alberta.


Steven Kashuba, Presiding Officer

Appearances:

Jordan Nichol, Altus Group
for the Complainant

Alana Hemple, Assessor, City of Edmonton
Cam Ashmore, Law Branch, City of Edmonton
for the Respondent

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.